

Senate Bill No. 1169

CHAPTER 248

An act to amend Section 12751.3 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 14, 2006. Filed with
Secretary of State September 14, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1169, Cox. Municipal utility districts: purchases.

The Municipal Utility District Act generally requires the purchase of supplies and materials by a municipal utility district to be let by contract to the lowest responsible bidder when the expenditure is in excess of \$25,000, or, in any district with a population of 250,000 or more, in excess of \$50,000, with annual adjustments to those dollar limits.

The act also establishes an alternative acquisition process under which, if the purchase of supplies and materials by a district exceeds \$50,000, and the district determines that ratepayers reasonably can expect a net benefit in the cost of district services, the district may provide for the purchase of the supplies and materials by contract let in accordance with best value at the lowest cost acquisition policies adopted by the district's board. The act requires a district that elects to purchase supplies and materials by contract let in accordance with those policies to submit a specified report to the Legislative Analyst on or before January 1, 2006, and requires the Legislative Analyst to report to the Legislature on or before April 1, 2006. Those alternative acquisition process provisions are repealed on January 1, 2007.

This bill would delete that January 1, 2007, repeal date, thereby making those alternative acquisition process provisions operative indefinitely for districts that purchase supplies and materials by contract let pursuant to a best value at the lowest cost of acquisition policy before January 1, 2006. The bill would require that the best value at the lowest cost acquisition policy adopted by the district include specified provisions. For any district that did not purchase supplies and materials by contract let pursuant to best value at the lowest cost acquisition policy prior to January 1, 2006, and that thereafter elects to purchase supplies and materials pursuant to a best value at the lowest cost acquisition policy, the district would be required to submit a specified report to the Legislative Analyst on or before January 1, 2011. The bill would require the Legislative Analyst to report to the Legislature on or before April 1, 2011. The bill would prohibit a district that did not purchase supplies and materials by contract let pursuant to best value at the lowest cost acquisition policies prior to January 1, 2006, from

purchasing supplies and materials by contract let pursuant to these provisions after January 1, 2012.

The people of the State of California do enact as follows:

SECTION 1. Section 12751.3 of the Public Utilities Code is amended to read:

12751.3. (a) The purpose of this section is to provide affected districts with an alternative acquisition process that will result in reduced costs to ratepayers. Notwithstanding Section 12751, when the expenditure for the purchase of supplies and materials exceeds fifty thousand dollars (\$50,000) and the district determines that ratepayers reasonably can expect a net benefit in the cost of district services, the district may provide for the purchase of the supplies and materials by contract let in accordance with best value at the lowest cost acquisition policies adopted by the board pursuant to this section.

(b) The best value at the lowest cost acquisition policies adopted pursuant to subdivision (a) shall include the following:

(1) Price and service level proposals that reduce the district's overall operating costs.

(2) Supplies and materials standards that support the district's strategic supplies and materials acquisition and management program direction.

(3) A procedure for protest and resolution.

(c) For purposes of this section, "best value at the lowest cost acquisition" means a competitive procurement process whereby the award of a contract for supplies and materials may take into consideration any of the following factors:

(1) The total cost to the district of its use or consumption of supplies and materials.

(2) The operational cost or benefit incurred by the district as a result of the contract award.

(3) The value to the district of vendor-added services.

(4) The quality, effectiveness, and innovation of supplies, materials, and services.

(5) The reliability of delivery or installation schedules.

(6) The terms and conditions of product warranties and vendor guarantees.

(7) The financial stability of the vendor.

(8) The vendor's quality assurance program.

(9) The vendor's experience with the provision of supplies, materials, and services.

(10) The consistency of the vendor's proposed supplies, materials, and services with the district's overall supplies and materials procurement program.

(11) The economic benefits to the general community related to job creation or retention.

(d) If a district that did not purchase supplies and materials by contract let pursuant to this section before January 1, 2006, elects to purchase supplies and materials by contract, let in accordance with best value acquisition policies adopted by the board pursuant to this section, the district shall submit a report to the Legislative Analyst on or before January 1, 2011. The report shall include in the report a summary of the costs and benefits of best value acquisition compared to traditional low bid procurement practices. The report shall also include statistics showing the number of contracts awarded to small businesses, minority-owned businesses, and new businesses and the number of years each contract awardee had been in business. The report shall also include an analysis of the effects of best value procurement practices on these businesses, the nature of any disputes arising from the use of best value procurement practices, and the status of those disputes. On or before April 1, 2011, the Legislative Analyst shall report to the Legislature on the use of “best value at lowest cost acquisition” procurement practices used by municipal utility districts, and recommend whether to modify this section and extend the authority of additional districts to elect to purchase supplies and materials by contract let in accordance with best value acquisition policies, beyond January 1, 2012.

(e) The district shall ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, district contracts and shall also ensure that discrimination in the award and performance of contracts does not occur on the basis of race, color, sex, national origin, marital status, sexual preference, creed, ancestry, medical condition, or retaliation for having filed a discrimination complaint in the performance of district contractual obligations.

(f) A district that did not purchase supplies and materials by contract let pursuant to this section before January 1, 2006, shall not purchase supplies and materials by contract let pursuant to this section after January 1, 2012.